

Senate File 291 - Introduced

SENATE FILE 291
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1094)

A BILL FOR

1 An Act relating to the discovery of privileged medical records,
2 including mental health records, in a criminal case and
3 including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 228.6, subsection 4, Code 2011, is
2 amended to read as follows:

3 4. a. Mental health information may be disclosed in a civil
4 or administrative proceeding in which an individual eighteen
5 years of age or older or an individual's legal representative
6 or, in the case of a deceased individual, a party claiming or
7 defending through a beneficiary of the individual, offers the
8 individual's mental or emotional condition as an element of a
9 claim or a defense.

10 b. Mental health information may be disclosed in a criminal
11 proceeding pursuant to section 622.10, subsection 3A.

12 Sec. 2. Section 622.10, Code 2011, is amended by adding the
13 following new subsection:

14 NEW SUBSECTION. 3A. a. Except as otherwise provided in
15 this subsection, the confidentiality privilege under this
16 section shall be absolute with regard to a criminal action and
17 this section shall not be construed to authorize or require
18 the disclosure of any privileged records to a defendant in a
19 criminal action unless either of the following occur:

20 (1) The privilege holder voluntarily waives the
21 confidentiality privilege.

22 (2) (a) The defendant seeking access to privileged records
23 under this section files a motion demonstrating in good faith a
24 reasonable probability that the information sought is likely
25 to contain exculpatory information that is not available from
26 any other source and for which there is a compelling need for
27 the defendant to present a defense in the case. Such a motion
28 shall be filed not later than forty days after arraignment
29 under seal of the court. Failure of the defendant to timely
30 file such a motion constitutes a waiver of the right to seek
31 access to privileged records under this section, but the court,
32 for good cause shown, may grant relief from such waiver.

33 (b) Upon a showing of a reasonable probability that the
34 privileged records sought may likely contain exculpatory
35 information that is not available from any other source, the

1 court shall conduct an in camera review of such records to
2 determine whether exculpatory information is contained in such
3 records.

4 (c) If exculpatory information is contained in such
5 records, the court shall balance the need to disclose such
6 information against the privacy interest of the privilege
7 holder.

8 (d) Upon the court's determination, in writing, that the
9 privileged information sought is exculpatory and that there
10 is a compelling need for such information that outweighs the
11 privacy interests of the privilege holder, the court shall
12 issue an order allowing the disclosure of only those portions
13 of the records that contain the exculpatory information. The
14 court's order shall also prohibit any further dissemination
15 of the information to any person, other than the defendant,
16 the defendant's attorney, and the prosecutor, unless otherwise
17 authorized by the court.

18 b. Privileged information obtained by any means other than
19 as provided in paragraph "a" shall not be admissible in any
20 criminal action.

21 Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
22 immediate importance, takes effect upon enactment.

23 EXPLANATION

24 This bill relates to the discovery of privileged medical
25 records, including mental health records, in a criminal case
26 and includes effective date provisions.

27 Under Iowa Code section 622.10, certain health care
28 professionals, including mental health professionals,
29 are prohibited, in giving testimony, from disclosing any
30 confidential communication that occurs between the health care
31 professional and a patient during the course of the patient's
32 course of treatment. In State v. Cashen, 789 N.W.2d 400
33 (2010), the Iowa Supreme Court set forth certain protocol that
34 must be followed to balance a patient's right to privacy with
35 a defendant's right to present evidence to a jury that might

1 influence the jury's determination of guilt if privileged
2 mental health records are made available in a criminal
3 proceeding.

4 The bill amends Code section 622.10 to provide that,
5 except as otherwise provided in the bill, the confidentiality
6 privilege under Code section 622.10 shall be absolute in
7 relation to a criminal action and that the bill shall not
8 be construed to authorize or require the disclosure of
9 any privileged records to a defendant in a criminal action
10 unless either the privilege holder voluntarily waives the
11 confidentiality privilege or the defendant seeking access to
12 privileged records files a motion demonstrating in good faith a
13 reasonable probability that the information sought is likely
14 to contain exculpatory information that is not available from
15 any other source and for which there is a compelling need for
16 the defendant to present a defense in the case. Failure of the
17 defendant to timely file a motion constitutes a waiver of the
18 right to seek access to privileged records but the court, for
19 good cause shown, may grant relief from such waiver.

20 The bill provides that if the defendant files such a motion,
21 the court shall conduct an in camera review of such records
22 to determine whether exculpatory information is contained in
23 such records upon a showing of a reasonable probability that
24 the privileged records sought may likely contain exculpatory
25 information that is not available from any other source. If
26 exculpatory information is contained in such records, the court
27 is required to balance the need to disclose such information
28 against the privacy interest of the privilege holder. If
29 the court determines that the privileged information sought
30 is exculpatory and that there is a compelling need for such
31 information that outweighs the privacy interests of the
32 privilege holder, the court shall issue an order allowing the
33 disclosure of only those portions of the records that contain
34 the exculpatory information. The court's order shall also
35 prohibit any further dissemination of the information to any

1 person, other than the defendant, the defendant's attorney,
2 and the prosecutor, unless otherwise authorized by the court.
3 The bill provides that privileged information obtained by any
4 means other than as provided in the bill is not admissible in
5 a criminal action.

6 The bill makes a conforming amendment to Code section 228.6
7 relating to the compulsory disclosure of mental health and
8 psychological information.

9 The bill takes effect upon enactment.